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SUBJECT: FORMER TRADE MINISTRY OFFICIALS SENTENCED FOR ROLE IN U.S.

QUOTA SCAM

REF: 05 HANOI 01 B) 04 HANOI 2752 C) 04 HANOI 2620

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¶1. (U) Sensitive But Unclassified. Not for Internet distribution.

¶2. (SBU) Summary: A Ho Chi Minh City court March 23 sentenced former Vice Minister of Trade Mai Van Dau to 14 years in prison for accepting bribes from apparel companies in exchange for quota for garment exports to the United States. Dau and 13 others were convicted in the quota scam, in which apparel manufacturers used middlemen to pay Ministry of Trade (MOT) officials thousands of dollars in exchange for U.S. textile quota in 2003 and 2004. The court also recommended that government prosecutors investigate additional allegations of bribe receiving in connection with illegal U.S. quota transactions by Dau and other MOT officials. Dau's sentence was a strong statement on government corruption on the part of the Government of Vietnam (GVN). The trial also illustrated how the flawed nature of GVN's quota allocation system created an environment where corruption could flourish. In a rare move, HCMC authorities permitted EconOff to attend the trial, which afforded some insights into the Vietnamese judicial system. End Summary.

Background

¶3. (U) From March 13-23, the Ho Chi Minh City Supreme People's Court heard the corruption trial involving Mai Van Dau, former Vice Minister of Trade; Le Van Thang, former Deputy Director of MOT's Export-Import Department; Nguyen Cuong, former Director of the HCMC Department of Trade; Mai Thanh Hai, former MOT official and son of former Vice Minister Dau; and ten other businesspeople, including a Taiwan national. The accused were charged with such crimes as bribery, bribe receiving, bribe facilitation, abuse of power, and falsifying documents. The court sentenced Dau, age 65, to 14 years in prison; Thang, age 53, to 17 years

imprisonment; Cuong, age 62, to 12 years imprisonment; and Hai to 5 years incarceration. The sentences of the other defendants ranged from one to eight years in prison. Dau, Thang, and Cuong were also fined USD 5,900, USD 21,700, and USD 156,000, respectively. All of the charges related to the illegal sale of U.S. textile quota during 2003 and 2004, when Vietnam was still subject to quota under the terms of the U.S.-Vietnam Bilateral Textile Agreement. The court also recommended that government prosecutors conduct additional investigations of bribe receiving on the part of Dau and Thang for their roles in additional instances of illegal U.S. quota transactions.

¶4. (U) Dau was convicted of receiving USD 6,000 in bribes, a charge that carried a maximum penalty of life in prison. His son, Hai, was accused of "cheating," a lesser charge than bribe receiving, and he was charged with falsifying his credentials. Hai falsely claimed he had received a Bachelor's degree in order to obtain his position at the MOT. Thang was convicted of receiving USD 18,000 in bribes. Cuong was convicted of helping businesspeople pass USD 38,000 in bribes to MOT officials Dau and Thang. The businessmen and women who were Dau and Thang's co-defendants all claimed to have paid the two officials tens of thousands of dollars more in bribes than prosecutors charged. Trial testimony revealed that Dau signed a statement during the police investigation admitting to receiving less money than his co-conspirators alleged, and it was these statements that formed the basis of the official charges.

Trial Testimony

¶5. (SBU) The testimony of the defendants at the trial revealed how the scam worked and provided insights into deficiencies of the GVN's quota allocation system. In one scenario, bribe facilitators would bring businesspeople needing quota to Dau's home. The businesspeople would show

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Dau their applications for quota, and he would make a notation on the applications. The notations would signal Thang - who was directly responsible for allocating quota - that the applicants should receive quota. The bribes were then passed along via the facilitators or enclosed in gifts of fruit or clothing.

¶6. (SBU) One defendant, Ms. Tran Thu Lan, admitted to giving Thang bribes of USD 1,000 to 2,000 on 17 different occasions when she submitted her applications for quota. (Note: Lan was sentenced to five years in prison. End note.) Lan worked for the A Chau Company, which eventually blew the whistle on the scam after failing to receive quota for which it had bribed Dau and Thang. Lan tearfully described being trapped between contract commitments to U.S. buyers and the GVN quota allocation system. Under the system, the MOT required companies to obtain contracts for apparel destined for the U.S. market before the MOT would grant quota. Lan testified that she and representatives from other companies were frequently faced with the dilemma of having contracts to provide apparel to U.S. buyers, but not having the quota that would allow the apparel into the U.S. market. On a number of occasions, Lan said she had applied for the quota, but the MOT had not responded to her applications. Desperate to avoid the financial penalties of missing contracted deadlines, Lan agreed to pay bribes in order to receive the quota and not break her contracts. Lan testified that she and her company were being sued in civil court for USD 2 million by a U.S. company (NFI) for failing to meet contract obligations.

¶7. (SBU) Mai Van Dau, in his testimony, recanted the statement he had given authorities in which he admitted to receiving USD 6,000. He told the judges he had signed the statement because he had fallen sick while in police

custody, and investigators had told him that if he signed the statement he would be released. Dau complained that even though he signed the statement he was not released. He said in court that he had not received any bribes and that the notations he made on the applications he was given in his home were simply notations he was in the habit of making on all his work-related documents. Judges asked Dau how he could have allowed the MOT to hire his son, Hai, knowing Hai did not have the university degree his job required. Dau responded that he did not realize Hai had not completed his degree. The judge noted that as Dau had only two sons, it should not be difficult to remember who had a degree and who did not.

Inside a Vietnamese courtroom

18. (SBU) HCMC authorities, rather unusually, permitted EconOff to attend the trial. (Note: Previous requests by ConGenOffs to attend trials not involving U.S. citizens have almost always been refused. End note.) EconOff attended sessions that included the reading of the indictment, questioning of defendants by judges and lawyers, and closing statements by defense attorneys. This trial was heard by two judges and three "jurors," who sit with the judges and who are permitted to question the defendants. The jurors are not full-time employees of the court, but are professionals in other fields, including government service, who are chosen based on their abilities and political ties. Two representatives of the Supreme People's Procuracy - the prosecutors - read the indictment, questioned the defendants and made a closing argument that included sentencing recommendations. (Note: The sentences received by the defendants were generally harsher than the recommendations made by the prosecutors. End note.) Defense attorneys sat in the audience behind the defendants, who sat on backless wooden benches in the center of the court. Five of the defendants, including Dau, Thang, Hai, and Cuong, were still in police custody, so they each sat with a police guard.

19. (SBU) The reading of the indictment, which lasted

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several hours, laid out the details of the GVN's case against the 14 defendants, including a lengthy listing of all the occasions when conspirators met and bribes were paid. The centerpiece of the trial was the questioning of the defendants. The judges, jurors, prosecutors and then defense attorneys were all allowed to question each of the defendants. No witnesses were called, and no physical evidence was presented. Testimony was followed by three days of closing arguments made by the prosecutors and the defense attorneys. On March 23, the judges issued their decision and announced the sentences. As the sentences were being read, photographers mobbed the defendants, particularly Dau, climbing onto the judges' stage to get photos of the defendants.

Comment

110. (SBU) The severity of the sentences indicates the GVN wanted to make an example of Dau and his MOT co-conspirators and to show that Vietnam does not take government corruption lightly. This was a relatively painless way for the GVN to highlight its anti-corruption efforts: Dau and his colleagues have been out of government service (and in police custody) since 2004, and the quota system no longer exists, following Vietnam's accession to the World Trade Organization. The fact that the government officials in this case received heavier sentences than the businesspeople who bribed them contrasts with another recent corruption case making headlines in HCMC. In this case, involving land corruption, a bribe giver was sentenced to death, while the local officials she paid off

received lengthy prison sentences.

¶11. (SBU) The trial also threw into sharp relief the inadequacies of the GVN system to allocate U.S. apparel quota. Throughout the life of the bilateral textile agreement, U.S. industry representatives reported that the quota allocation system used by the GVN was inefficient and encouraged corruption. U.S. buyers also tell us the GVN could have designed the quota allocation system so that companies were not placed in the tough position of having products under contract that needed to be sent to the United States, but not having the necessary quota. The GVN's failure to design a better system was a contributing factor to the corruption in this case.

WINNICK